



Linda S. Adams
*Secretary for
Environmental Protection*

California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



Arnold Schwarzenegger
Governor

Certified Mail: 7003 1680 0000 6174 8210

January 29, 2007

Mr. Matthew Constantine, Director
Kern County Environmental Health Services Department
2700 M Street, Suite 300
Bakersfield, California 93301

Dear Mr. Constantine:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, Office of the State Fire Marshal, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of Kern County Environmental Health Services Department Certified Unified Program Agency (CUPA) on December 13 and 14, 2006. The evaluation was comprised of an in-office program review and field inspections. The State evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff, which includes identified deficiencies, preliminary corrective actions, and timeframes. Two additional evaluation documents are the Program Observations and Recommendations and the Examples of Outstanding Program Implementation.

The enclosed Summary of Findings is now considered Final and based on review, I find that Kern County Environmental Health Services Department's program performance is satisfactory with some improvement needed. To complete the evaluation process, please provide deficiency status reports to Cal/EPA of your progress toward correcting the identified deficiencies. Submit your deficiency status reports to Kareem Taylor every 90 days after the evaluation date. The first deficiency status report is due on March 14, 2007.

Cal/EPA also noted during this evaluation that Kern County Environmental Health Services Department has worked to bring about a number of local program innovations, including: offering a 10% discount on hazardous materials business plan fees for owners/operators who submit their annual inventory certifications online and the use of a fully equipped chemical emergency response van. The van contains communication equipment, lap tops, detection instruments, infrared (night vision) scopes, a reference library, personal protective equipment, self-contained breathing apparatus (SCBA), hazard category kit and other necessary tool for emergency response. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosures

cc: Please see next page.

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cc: Mr. Joe Canas, Chief Environmental Health Specialist (Sent Via Email)
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Deficiencies and Corrective Actions

1. **Deficiency:** The CUPA is not implementing their Fee Accountability Program in accordance with the law.

CUPA Corrective Action: CUPA responds here

2. **Deficiency:** The CUPA is unable to document that all facilities that have received a notice to comply citing minor violations have returned to compliance within 30 days of notification.

CUPA Corrective Action: CUPA responds here

3. **Deficiency:** A review of the summary reports show that not all tiered permitting facilities have been inspected at least every three years.

CUPA Corrective Action: CUPA responds here

4. **Deficiency:** The CUPA is not inspecting UST facilities annually.

CUPA Corrective Action: CUPA responds here

5. **Deficiency:** The CUPA is allowing UST facilities to operate with expired operating permits.

CUPA Corrective Action: CUPA responds here

6. **Deficiency:** UST facility files reviewed either lacked plot plans, or the plot plans did not contain all the required elements.

CUPA Corrective Action: CUPA responds here

7. **Deficiency:** File research indicated that there have been numerous notices of violations for UST facilities that have not been followed up on or corrected.

CUPA Corrective Action: CUPA responds here

8. **Deficiency:** The CUPA has not established a CalARP dispute resolution procedure.

CUPA Corrective Action: CUPA responds here

9. **Deficiency:** The CUPA has not met the inspection frequency for the CalARP Program.

CUPA Corrective Action: CUPA responds here



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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION **SUMMARY OF FINDINGS**

CUPA: Kern County Environmental Health Services

Evaluation Date: December 13 and 14, 2006

EVALUATION TEAM

Cal/EPA: Kareem Taylor

SWRCB: Sean Farrow

OES: Brian Abeel

DTSC: Mark Pear

OSFM: Francis Mateo

This Summary of Findings includes the deficiencies identified during the evaluation, observations and recommendations for program improvement, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Kareem Taylor at (916) 327-9557.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	<p>The CUPA is not implementing their Fee Accountability Program in accordance with the law. Facilities are billed using the Single Fee system and the fees are collected (The CUPA has a 99% collection rate for the past 2 fiscal years (FY)); however, during the evaluation, it was unclear how the CUPA determined its current fee schedule. All of the direct, indirect, and staff costs (CUPA expenses) have not been thoroughly considered in the development of the fee schedule. The CUPA does not know approximately how much revenue it needs to collect through fees to cover the implementation costs of the Unified Program.</p> <p>Citation: Title 27, Section 15210 (b)(1)</p>	<p>By March 14, 2007, implement the Fee Accountability Program as observed in the CUPA's procedures document. Consider all of the direct, indirect, and staff costs of the CUPA when determining the fee schedule. The fees billed and collected should be adequate to finance the Unified Program.</p>
2	<p>The CUPA is unable to document that all facilities that have received a notice to comply citing minor violations have returned to compliance within 30 days of notification. For FY 05/06, 433 hazardous waste generator inspections were conducted and 194</p>	<p>By January 14, 2008, ensure that all facilities have returned to compliance either through an RTC certificate or a re-inspection report. Please follow-up on all facilities with cited violations.</p>

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	<p>facilities were identified with 194 minor violations, but only 60 RTC's were received. For FY 04/05, 350 hazardous waste generator inspections were conducted and 192 facilities were identified with minor violations, but only 102 RTC's were received. Lastly, for FY 03/04, 233 routine hazardous waste generator inspections were conducted and 114 facilities were identified with minor violations, but only 104 RTCs were received.</p> <p>A review of the files indicated the following:</p> <ul style="list-style-type: none"> • No RTC has been received for the inspection conducted on 06/19/2006 for Quality Tubular Services located at 3525 Gilmore Avenue in Bakersfield, CA. • No RTC has been received for the inspection conducted on 08/10/2006 for Mendoza Auto Dismantling located at 7780 South Union Avenue in Bakersfield, CA., and • No RTC has been received for the inspection conducted on 07/14/2004 for Performance Electric located at 1200 Jones Road in Bakersfield, CA. <p>Citation:</p> <p>HSC 25187.8</p>	
3	<p>A review of the summary reports show that not all tiered permitting facilities have been inspected at least every three years.</p> <p>Citation:</p> <p>Title 27, Section 15200(B)(2) HSC 25201.4(b)(2)</p>	<p>Immediately, inspect all tiered permitting facilities at least once every three years. Additional resources need to be committed to the generator/TP program.</p>
4	<p>The CUPA is not inspecting UST facilities annually. During the past fiscal year, the CUPA inspected approximately 59 % of the UST facilities in FY 05/06.</p> <p>This deficiency was also identified during the CUPA's last evaluation in 2003.</p> <p>Citation:</p> <p>HSC 25288(a)</p>	<p>By July 1, 2007, the CUPA will inspect all UST facilities annually.</p>

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<p>5</p>	<p>The CUPA is allowing UST facilities to operate with expired operating permits.</p> <p>According to the 2005/2006 CUPA self audit, <i>“In April 2006 a decision was made to issue a permit to all businesses operating without a current permit due to inability to complete inspections”</i>.</p> <p>Citation:</p> <p>HSC 25284(a)(1) HSC 25285(b)</p>	<p>By January 14, 2007, the CUPA will inspect UST facilities before issuing operating permits.</p>
<p>6</p>	<p>UST facility files reviewed either lacked plot plans, or the plot plans did not contain all the required elements. The plot plans were missing the location of ATG, sump, UDC, monitoring panel, and/or sensor.</p> <p>Citation:</p> <p>Title 23, Section 2711(a)(8), Title 23, Section 2632(d)(1)(c) Monitoring System Certification, Appendix 6 of Title 23, Chapter 16</p>	<p>By December 14, 2007, check for file completeness and update as necessary.</p>
<p>7</p>	<p>File research indicated that there have been numerous notices of violations for UST facilities that have not been followed up on or corrected.</p> <p>For example: Fire Station 32 and 71</p> <p>Citation:</p> <p>Title 23 Section 2712 (e) HSC 25288(d)</p>	<p>By April 14, 2007, the CUPA will review UST files and follow-up on facilities with violations that need to be corrected. Develop a corrective plan to bring all UST facilities into compliance.</p>
<p>8</p>	<p>The CUPA has not established a CalARP dispute resolution procedure. The only dispute processes found in the CUPA SOPs were Hazardous Waste Generator/Tiered Permitting Inspections & Fee Dispute.</p> <p>Citation:</p> <p>Title 19, Section 2780.1</p>	<p>By March 14, 2007, the CUPA will develop a CalARP dispute resolution procedure that addresses all of the elements of Title 19, 2780.1.</p>

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9	<p>The CUPA has not met the inspection frequency for the CalARP Program.</p> <p>The CUPA is not inspecting all stationary sources once every three years as required by law.</p> <ul style="list-style-type: none">• In FY 03/04, the CUPA inspected 10 out of 173 stationary sources. The CUPA's inspection rate for FY 03/04 is 6%.• In FY 04/05, the CUPA inspected 26 out of 171 stationary sources. The CUPA's inspection rate for FY 04/05 is 15%.• In FY 05/06, the CUPA inspected 27 out of 172 stationary sources. The CUPA's inspection rate for FY 05/06 is 16%. <p>Citation:</p> <p>Title 19, Section 2775.3</p>	<p>By December 14, 2007, and annually thereafter, the CUPA will inspect at least one third (33% per year) of the stationary sources subject to the CalARP Program.</p>
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CUPA Representative

(Print Name)

(Signature)

Evaluation Team Leader

(Print Name)

(Signature)

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PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section simply address those areas not specifically required of the CUPA by regulation or statute and are provided for continuous program improvement only.

1. **Observation:** The CUPA has a single fee collection rate of 99% for FY 04/05 and FY 05/06.

Recommendation: Keep up the good work.

2. **Observation:** The CUPA is in the process of consolidating its hard copy facility files to include the pertinent Unified Program elements into the same facility file.

Recommendation: Keep up the good work.

3. **Observation:** The CUPA was able to demonstrate that most complaints which were referred by DTSC from January 1, 2005 to November 1, 2006 were investigated. However, Complaint No. 05-1105-0547, could not be located in the CUPA's data base system.

Recommendation: Ensure that all complaints being received by the CUPA from DTSC are crossed reference by DTSC's log number in your complaint tracking database for follow-up.

4. **Observation:** CUPA conducts very thorough UST inspections.

Recommendation: Keep up the good work.

5. **Observation:** The CUPA's UST Inspection form does not identify Significant Operational Compliance (SOC) items or provide for a summary of these items for tracking purposes.

Recommendation: Provide a means for determining SOC compliance during the inspection.

6. **Observation:** Inspector did not ask permission to inspect facility.

Recommendation: Prior to starting inspection, the inspector should introduce themselves to the facility management and let them know what is going to happen during the inspection.

7. **Observation:** The tank owners are not required by the CUPA to complete new UST facility and UST tank forms when the forms are revised to include additional reporting requirements, therefore the forms submitted prior to 1999 may not be complete.

Recommendation: Provide revised Unified Program UST forms to owners for updated information.

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- 8. Observation:** File review showed that many items were missing from the files. Examples are Annual Spill Bucket Testing, Annual Maintenance inspection report for the last three years, and documentation for violation correction.

Recommendation: Ensure that files are complete as inspections come up.

- 9. Observation:** The CUPA uses computer technology as a business information and data collection tool. The CUPA uses “Envision”, software that is used to collect information from the regulated community. In addition, the software “ChemLookup” is being used for business plan information and to store chemical inventory and emergency response data. During the evaluation, the program manager and staff demonstrated the operation of ChemLookup. In the process, error messages occurred, thus, not completing the demonstration. Staff later discovered that the error messages were due to software upgrade of Envision and merging with ChemLookup. The system did not allow some important information to be extracted such as emergency contact, chemical inventory. The earliest the IT could fix the problem was three (3) days. As a result, much of the data or information will be taken from hard copy files. Incidentally, the CUPA also does not forward hard copies of the Business Plans to Fire agencies. This could create a big problem as far as extracting information if there was a big hazmat incident in a facility and the fire department responds to the incident.

Recommendation: The CUPA’s should provide hard copies of the Business Plans and Inventories to the fire agencies who would respond to emergencies.

- 10. Observation:** The CUPA staff and program manager indicated that it does not regularly meet or coordinate with the fire agencies nor do they send hard copies of the business plans to the fire agencies.

Recommendation: The CUPA should send a copy of the business plans of regulated facilities and constantly meet and discuss issues related to business plans and chemical inventories.

- 11. Observation:** During the file review, some of the files did not contain evidence of businesses updating their inventory statements. Specifically, electronic signatures are missing from inventory updates.

Recommendation: The CUPA should develop a mechanism to obtain electronic signatures from regulated business owner/operators whenever their business plans and chemical inventories change.

- 12. Observation:** The CUPA is required to inspect businesses subject to the business plan program once (1) every three (3) years. The CUPA inspected:
- 22% of the businesses in fiscal year 03-04
 - 27% of the businesses in fiscal year 04-05
 - 33% of the businesses in fiscal year 05-06

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Since the CUPA has displayed improvement in its business plan inspection frequency each fiscal year, no deficiency was cited for not meeting the mandated inspection frequency for FY 03/04 and FY 04/05.

Recommendation: The CUPA should continue meeting a 33% inspection frequency per year.

- 13. Observation:** The CUPA has been experiencing a shortage of staff to complete all of the mandated CUPA activities, as noted during the two previous evaluations. While efforts have been made to obtain additional staff, staff members have been lost to retirement and other CUPAs. While the CUPA has attempted to recruit program personnel for approximately the past three years (03-06), the CUPA has not realized a significant increase in personnel. As a result, the CUPA has not been able to meet all the inspection mandates of the Unified Program elements.

Recommendation: Continue to hire more staff so that the CUPA can meet mandated inspection frequencies for all the program elements.

- 14. Observation:** The CUPA's "Area Plan" and references to the "Kern County Emergency Plan" appear to meet the requirements of Title 19, Section 2722-2728. The "Area Plan" is not intended and designed to be a procedural manual. The "Area Plan" is based on the "Kern County Emergency Plan". The material inside the "Area Plan" is provided in more detail in the "Kern County Emergency Plan".

Recommendation: Since the material inside the "Area Plan" is provided in more detail within the "Kern County Emergency Plan", add the "Area Plan" as an appendix to the "Kern County Emergency Plan".

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. The CUPA has just started using tablet PCs for their inspections. The tablet PCs contain electronic versions of inspection reports, information on the facilities inspected, and tasks that require completion. After CUPA inspectors return to the office from daily activities, they upload inspection information into the CUPA's Envision database and download alerts and tasks to complete for the following workday. Facility information on the Envision database is available to all CUPA staff.
2. In coordination with U.S. EPA, the CUPA facilitated a 4-day CalARP workshop for registered businesses and agencies within the county. The course provided an overview of the RMP regulations, the basic skills for RMP submittal, and the technical information and auditing skills needed in conducting RMP inspections and audits. The feedback from trainers and trainees was positive.
3. The level of detail of the evidence documented in the Kemiron Pacific civil enforcement case was excellent. The photographic evidence contained labels that documented who took the photograph, date of the photograph, photograph number, photograph location, and a brief description of the subject photographed. The details of witness interviews and phone conversations were documented and CDs were provided for back-up documentation. The records of manifests, inspections reports, laboratory results, and Chain-of-Custody (COC) forms were also included. This case was settled for \$150,000.
4. Facilities may submit their hazardous waste inventory certification on the CUPA's website. This is a convenient way for facilities to update their inventory information with the CUPA. The website also offers an incentive (a 10% discount on hazardous materials business plan fees) for owners/operators who submit their annual certifications online.
5. On the CUPA's inspection forms, there is an area where facility owners/operators to certify return to compliance for cited violations by signature.
6. The Kern County Environmental Health Department settled the following formal enforcement cases:
 - Administrative enforcement action: Cranes, Inc for its failure to utilize the proper hazardous waste manifest for the transportation of flammable hazardous waste.
Penalty amount: \$6,872
 - Civil enforcement case referral: VSS Emultech, Inc. for the illegal disposal of hazardous waste to an unpermitted facility, for storage of hazardous waste beyond 90 days, and for failure to properly label hazardous waste containers.
Penalty amount: \$650,000.
7. The CUPA has a very informative Unified Program website. On the main page, you will find "Program Forms", "Hot Topics", "CUPA info (Q & A)", "Legal", "More info", and "Related Topics". Some examples of clickable links include: a link to a GIS database allowing the public to search parcels and other related fields, a link to applications for permits, a link for removal of tanks,

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and a link for complaint submittal. The website also includes guidelines for site characterization and remediation.

8. The CUPA maintains a fully equipped chemical emergency response van. The van contains communication equipment, lap tops, detection instruments, infrared (night vision) scopes, a reference library, personal protective equipment, self-contained breathing apparatus (SCBA), hazard category kit and other necessary tool for emergency response.